

(2005) 10 MP CK 0015
In the Madhya Pradesh High Court
Case No : Writ Petition No. 6044 of 2003

Avinash Chandra Nagpal (Dr.)

APPELLANT

Vs

Government of M.P. and others

RESPONDENT

Date of Decision : 05-10-2005

Acts Referred:

Citation : (2006) 2 MPJR 256 : (2006) 2 MPLJ 447

Hon'ble Judges : A.K. Shrivastava, J

Bench : Single Bench

Advocate : R.C. Tiwari, for the Appellant; V.P. Nema, Government Advocate for Respondents Nos. 1, 3 and Hemant Shrivastava, for the Respondent

Final Decision : Dismissed

Judgement

A.K. Shrivastava, J.

This petition was originally filed before the M. P. State Administrative Tribunal at Jabalpur on 6-2-1990. However, on account of abolition of the Tribunal, this petition has been received by this Court for its adjudication.

By this petition, the petitioner is claiming seniority in the cadre of Lecturer in Medical College w.e.f. 11-8-1971 when he was appointed on the post of Casualty Medical Officer vide order Annexure-A-3 dated 11-8-1971.

The contention of Learned Counsel for the petitioner is that the post of Casualty Medical Officer was up-graded on 16-8-1971 and the pay scale of that post became at par with that of Lecturer in Medical College. Thereafter vide Annexure A-20 dated 20-7-1989 the nomenclature of the post of Casualty Medical Officer (CMO) was changed and the Casualty Medical Officer was denoted as Lecturer, Medical College. Shri Tiwari, Learned Counsel for the petitioner by inviting my attention to AnnEx. A-13, which is an order of the State Government, Public Health and Family Welfare Department dated 4-4-1987 has submitted that the services of the petitioner were taken on the post of Lecturer, Medical College on ad hoc basis and in pursuance to the rules, namely, M. P. Regularisation of Ad

hoc Appointment Rules, 1986 (in short "the Rules"), the services of the petitioner on the post of Lecturer, Medical College were regularised w.e.f. 4-4-1987 (AnnEx. A-13). The contention is that indeed it should have been from 11-8-1971, i.e. the date on which the petitioner was initially appointed on the post of Casualty Medical Officer.

On the other hand, Shri V.P. Nema, learned Government Advocate for respondents 1 and 3 and Shri Hemant Shrivastava appearing for respondent No. 2 Public Service Commission have argued that according to Rule 12 of the Rules, the seniority would be provided from the date of regular appointment. Since the services of the petitioner were regularised vide AnnEx. A-13 on 4-4-1987, therefore, rightly he has been given seniority w.e.f. this date. Shri Hemant Shrivastava, Learned Counsel appearing for respondent No. 2 PSC, has placed heavy reliance on the decision of the Apex Court in the case of Dr. J.S. Chhabra Vs. State of M.P. and Others, .

After having heard Learned Counsel for the parties, I am of the view that this petition deserves to be dismissed.

True, the petitioner was appointed on the post of Casualty Medical Officer on 11-8-1971. It is also no more in dispute that vide AnnEx. A-2 dated 16-8-1971 the post of Casualty Medical Officer was up-graded and the pay scale was brought at par with that of Lecturer, Medical College. It is also true that vide AnnEx. A-20 dated 20-7-1989 nomenclature of the post of Casualty Medical Officer was changed and they were denoted as Lecturer, Medical College. But it is equally true that vide AnnEx. A-13 dated 4-4-1987 the services of the petitioner, who was serving on ad hoc basis on the post of Casualty Medical Officer, were regularised in accordance to the Rules. The services of the petitioner were regularised on 4-4-1987 as it is clear on bare perusal of AnnEx. A-13. At this juncture it would be condign to place reliance on Rule 12 of the Rules, which speaks about providing the seniority and which reads thus :-

Seniority.- (1) A person appointed under these rules shall be entitled to seniority only from the date of the order of regular appointment and shall be placed below the persons appointed in accordance with the relevant recruitment rules prior to the appointment of such person under these rules.

(2) If two or more persons are appointed together, their seniority inter se shall be determined in the order mentioned in the order of appointment.

If the aforesaid rule is tested on the anvil of the present factual scenario, it would reveal that the petitioner was rightly given seniority w.e.f. 1987 when his services were regularised vide AnnEx. A-13 dated 4-4-1987. It would be germane to place reliance on the decision in the case of Dr. J. S. Chhabra (supra) wherein, in similar facts and circumstances the Apex Court in para 8 has held as under :

8. What is required to be considered next is from which date seniority of Dr.

Tiwari whose services were regularised on 4-4-1987 and was declared/ redesignated as lecturer on 21-7-1989 should be considered as a lecturer. Accepting his contention the Tribunal has granted him seniority as a lecturer right from the date he started working as CMO (Lecturer Grade) in 1971. As against that the contention raised on behalf of Dr. Chhabra is that in any case Dr. Tiwari could not have been granted seniority from the date earlier than 21-7-1989. The contention raised on behalf of the State is that it has rightly given him seniority from 4-4-1987. The services of Dr. Tiwari were regularised under the M. P. Regularisation of Ad hoc Appointment Rules, 1986. Rule 12 of the said Rules provides that a person appointed under those Rules shall be entitled to seniority only from the date of the order of regular appointment and shall be placed below the persons already appointed in accordance with the relevant recruitment rules. Dr. Tiwari accepted his regularisation under those Rules. Neither at the time of regularisation of his services nor at any subsequent time did he challenge the validity of the said Rules. Therefore, he could not have been given seniority as CMO (Lecturer Grade) from a date earlier than the order of his regular appointment. The Tribunal was, therefore, wrong in directing that his seniority as a lecturer should be counted from the date he has started working as CMO (Lecturer Grade). The Tribunal failed to appreciate that the said direction was contrary to the statutory rules and for that reason no benefit on the basis of principle of continuous officiating could have been given to him. As the services of Dr. Tiwari were regularised on 4-4-1987 and he was appointed regularly from that date on an equivalent post the Government has rightly determined his seniority as a lecturer from that date. Merely because the Government declared him as a lecturer on 21-7-1989, it would not have been fair and just to grant him seniority as a lecturer only from that date. The contention to that effect raised on behalf of the appellant Dr. Chhabra has thus no substance and has to be rejected.

If Rule 12 of the abovesaid Rules and decision of Dr. J. S. Chhabra (supra) are kept in juxtaposition to the facts of the present case, it cannot be said that the action of respondents treating the seniority of petitioner w.e.f. 4-4-1987 was arbitrary or their decision was faulty. The respondents have rightly given seniority to the petitioner w.e.f. 1987.

Judging from all angles, I do not find any merit in this petition and the same is hereby dismissed with no order as to costs.